

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

DTE No. 04-03

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	)
BOSTON GAS COMPANY D/B/A	)
KEYSPAN ENERGY DELIVERY NEW	)
ENGLAND	)
	)
_____	)

**PETITION TO INTERVENE OR PARTICIPATE IN PROCEEDINGS**

NOW COMES Mill Creek Development Corporation (“Mill Creek”), pursuant to 220 CMR 1.03, and respectfully requests that it be permitted to intervene in the above-entitled matter.

As a basis of this Petition to Intervene, Mill Creek states as follows:

1. Petitioner Mill Creek is a Massachusetts corporation with a principal place of business at 9 Broadway, Town of Wakefield, County of Middlesex, Commonwealth of Massachusetts.

2. The above-entitled proceeding relates to a proposed taking by eminent domain by Boston Gas Company d/b/a KeySpan Energy Delivery New England of certain property located at Mill Creek Condominium, 165-175-185 Cottage Street in the City of Chelsea, County of Suffolk, Commonwealth of Massachusetts.

3. At the present time, Petitioner Mill Creek owns all phasing rights for Phase II of the Mill Creek Condominium pursuant to a Mill Creek Condominium Certificate Evidencing Revival of Phasing Rights dated February 4, 2003, and recorded

at the Suffolk County Registry of Deeds as Document No. 666633 and Mill Creek Condominium Certificate Evidencing Grant of Phasing Rights Phase II dated September 10, 2003, and recorded at the Suffolk County Registry of Deeds as Document No. 666635.

4. At the present time, Petitioner Mill Creek is the purchaser of the Phasing Rights to Phase III of the Mill Creek Condominium pursuant to a Mill Creek Condominium Certificate Evidencing Grant of Phasing Rights Phase III dated September 10, 2003, and related documents.

5. As a result of the above-described transactions, Petitioner Mill Creek has the rights to construct the Phase II and Phase III condominium units at Mill Creek Condominium, and, thus, will be substantially and specifically affected by the above-entitled proceeding, as the proposed taking relates to property located in the Phase II and/or Phase III portion of Mill Creek Condominium.

6. Pursuant to 220 CMR 1.03(1)(b) and M.G.L. c. 30A, § 10, Petitioner Mill Creek has standing to intervene in this matter as its rights may be substantially and specifically affected by the above-entitled proceeding.

7. Petitioner Mill Creek contends that pursuant to certain documents executed between it and the Trustees of the Mill Creek Condominium, including but not limited to those listed below, it has the sole right to construct the Phase II and Phase III condominium units and the exclusive right and easement to use the common areas in order to develop these condominium units. Petitioner Mill Creek thus contends that it will or may be substantially affected by the proposed taking, as the land that is the

subject matter of the taking is within the Phase II and/or Phase III areas of Mill Creek Condominium.

8. The documents Petitioner Mill Creek would expect to introduce, if necessary, to substantiate its interest in this matter include but are not limited to the following:

- A. Mill Creek Condominium Certificate Evidencing Revival of Phasing Rights dated February 4, 2003
- B. Mill Creek Condominium Certificate Evidencing Grant of Phasing Rights Phase II dated September 10, 2003
- C. September 30, 2000 Agreement between the Trustees of Mill Creek Condominium Trust and Falite Bros., Inc.
- D. September 10, 2003 Escrow Agreement between the Trustees of Mill Creek Condominium Trust and Mill Creek Development Corporation
- E. March 1, 2002 Amendment to Purchase and Sale Agreement between the Trustees of Mill Creek Condominium Trust and Falite Bros., Inc.
- F. September 10, 2003 Mill Creek Condominium Certificate Evidencing Grant of Phasing Rights
- G. September 10, 2003 Mill Creek Condominium Condominium Phasing Lease Phase II

- H. September 10, 2003 Assumption Agreement between Mill Creek Development Corporation and Falite Bros., Inc.
- I. September 10, 2003 Mill Creek Condominium Certificate Evidencing Grant of Phasing Rights Phase III
- J. September 10, 2003 Mill Creek Condominium Condominium Phasing Lease Phase III

WHEREFORE, petitioner, Mill Creek Development Corporation, respectfully requests, pursuant to 220 CMR 1.03, that it be permitted to intervene in the above-entitled matter and be provided with copies of all pleadings, orders or judgments filed with or issued by the Department of Telecommunications and Energy in the above-entitled matter.

MILL CREEK DEVELOPMENT CORPORATION,  
By its attorney,

Date: \_\_\_\_\_

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DAVID J. GALLAGHER - BBO NO. 183120  
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CERTIFICATE OF SERVICE

I, David J. Gallagher, hereby certify that a copy of the Petition to Intervene or Participate in Proceedings was served by Federal Express and by e-mail to Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2<sup>nd</sup> Floor, Boston, MA 02110, and by first class mail, postage prepaid, to Thomas P.

O'Neill, Esq., Senior Counsel, KeySpan Energy Delivery New England, 52 Second Avenue, Waltham, MA 02451, this 7<sup>th</sup> day of April, 2004.

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